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6 **UNITED STATES DISTRICT COURT**
FOR THE
DISTRICT OF NEW JERSEY

7 T'ONYA GREEN,)
8)
Plaintiff,) Case No.:
9)
v.) COMPLAINT AND DEMAND FOR JURY
10) TRIAL
MERCANTILE ADJUSTMENT BUREAU,)
11 LLC,) (Unlawful Debt Collection Practices)
12)
Defendant.)
13

14 **COMPLAINT**

15 T'ONYA GREEN ("Plaintiff"), by her attorneys, KIMMEL & SILVERMAN, P.C.,
16 alleges the following against MERCANTILE ADJUSTMENT BUREAU, LLC ("Defendant"):

17 **INTRODUCTION**

18 1. Plaintiff's Complaint is based on the Fair Debt Collection Practices Act, 15
19 U.S.C. § 1692 *et seq.* ("FDCPA").
20

21 **JURISDICTION AND VENUE**

22 2. Jurisdiction of this court arises pursuant to 15 U.S.C. § 1692k(d), which states
23 that such actions may be brought and heard before "any appropriate United States district court
24 without regard to the amount in controversy;" 28 U.S.C. § 1331 grants this court original
25

1 jurisdiction of all civil actions arising under the laws of the United States; and 28 U.S.C. § 1367
2 grants this Court supplemental jurisdiction over any state law claims.

3 3. Defendant conducts business in the State of New Jersey, therefore personal
4 jurisdiction is established.

5 4. Venue is proper pursuant to 28 U.S.C. § 1391(b)(2).

7 **PARTIES**

8 5. Plaintiff is a natural person who resides in Cherry Hill, New Jersey.

9 6. Plaintiff is a “consumer” as that term is defined by 15 U.S.C. § 1692a(3), or in
10 the alternative is a non-debtor granted a cause of action under the FDCPA. See Bodur v.
11 Palisades Collection, LLC, 2011 WL 6306725, at 8-9 (S.D.N.Y. 2011) (FDCPA protects non-
12 debtors subject to errant collection efforts and “[t]o hold otherwise would run contrary to the
13 purpose of the FDCPA to ‘also protect [] people who do not owe money at all’ since collection
14 efforts are often aimed at the wrong person either because of mistaken identity or mistaken
15 facts.”)

16 7. Defendant is a national debt collection company with corporate headquarters
17 located at 6390 Main Street, Williamsville, NY 14221.

18 8. Defendant is a “debt collector” as that term is defined by 15 U.S.C. § 1692a(6).

19 9. Defendant acted through its agents, employees, officers, members, directors,
20 heirs, successors, assigns, principals, trustees, sureties, subrogees, representatives, and insurers.
21

22 **FACTUAL ALLEGATIONS**

23 1. At all relevant times, Defendant was attempting to collect an alleged debt of Plaintiff’s
24 deceased mother, who passed in March, 2011.
25

2.

1 3. The alleged debt arose out of transactions that were primarily for personal, family
2 or household purposes.

3 4. Defendant's collection calls originated from numbers including, but not limited
4 to, (877) 254-0957. The undersigned has confirmed this number belongs to Defendant.

5 5. Beginning in January 2012 and continuing through October 2012, Defendant's
6 collectors called Plaintiff's cellular telephone approximately two to four times a day.

7 6. The cellular telephone number was Plaintiff's, and was one that her mother never
8 had access to and never used.

9 7. Defendant's collectors "Marie" and "Sarah," (and others) were told by that the
10 debt was not Plaintiff's but of her deceased mother, and to immediately stop calling. However,
11 Defendant and its collectors continued to call Plaintiff.
12

13 8. Defendant's calls were placed with the intent to harass Plaintiff as no lawful
14 purpose was served by continuing to call.

15 9. During its calls, Defendant's collectors regularly neglected to state that the
16 communication was from a debt collector.

17 10. Upon information and belief, the debt Defendant was calling about had been
18 discharged in a bankruptcy prior to the death of Plaintiff's deceased mother.

19 11. Defendant failed to mail Plaintiff a writing advising Plaintiff of her rights
20 pursuant to the FDCPA.
21

22 12. Further, upon information and belief, Defendant placed calls to Plaintiff's
23 cellular phone that were computer generated and/or generated by the use of an automatic
24 telephone dialing system, or used a pre-recorded or artificial voice.

25 13. Defendant's telephone calls to Plaintiff's cellular phone were not for "emergency
purposes," as specified in 47 U.S.C. §227(b)(1)(A).

1 14. Defendant's conduct was pursued with the intent to upset, annoy, incite, deceive
2 and harass Plaintiff into paying the alleged debt of her deceased mother.

3
4 **COUNT I**
5 **DEFENDANT VIOLATED §1692d OF THE**
6 **FAIR DEBT COLLECTION PRACTICES ACT**

7 23. Section 1692d of the FDCPA prohibits debt collectors from engaging in any
8 conduct the natural consequence of which is to harass, oppress or abuse any person in connection
9 with the collection of a debt communication.

10 24. Defendant violated section 1692d of the FDCPA by calling Plaintiff continuously
11 and repeatedly over the course of many months, by continuing to contact her after she demanded
12 that Defendant cease communication with her, and when it engaged in other harassing conduct.

13
14 **COUNT II**
15 **DEFENDANT VIOLATED § 1692d(5) OF THE**
16 **FAIR DEBT COLLECTION PRACTICES ACT**

17 25. Section 1692d(5) of the FDCPA prohibits debt collectors from causing a
18 telephone to ring or engaging any person in telephone conversation repeatedly or continuously
19 with the intent to annoy, abuse, or harass any person at the called number.

20 26. Defendant violated section 1692d(5) of the FDCPA when it caused Plaintiff's
21 telephone to ring repeatedly, multiple times a day, and continuously over the course of months,
22 with the intent to harass or annoy Plaintiff.

23
24 **COUNT III**
25 **DEFENDANT VIOLATED § 1692e OF**
 THE FAIR DEBT COLLECTION PRACTICES ACT

27. Section 1692e of the FDCPA prohibits debt collectors from making false,

1 deceptive or misleading representations or means in connection with the collection of an alleged
2 debt.

3 28. Defendant violated § 1692e of the FDCPA when it was deceptive with Plaintiff
4 when its collectors called her and did not identify themselves as debt collectors, when it
5 attempted to collect a debt that was not owed by Plaintiff, and when it made other misleading
6 representations.

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9 **COUNT IV**
10 **DEFENDANT VIOLATED § 1692e(2)(A) OF**
11 **THE FAIR DEBT COLLECTION PRACTICES ACT**

12 29. Section 1692e(2)(A) of the FDCPA prohibits debt collectors from making the
13 false representation of the character, amount, or legal status of any debt.

14 30. Defendant violated § 1692e(2)(A) when it attempted to collect an amount from
15 Plaintiff that she did not owe.

16
17 **COUNT V**
18 **DEFENDANT VIOLATED § 1692e(10) OF**
19 **THE FAIR DEBT COLLECTION PRACTICES ACT**

20 31. Section 1692e(10) of the FDCPA prohibits debt collectors from using false
21 representations or deceptive means to collect a debt or to obtain information from a consumer.

22 32. Defendant violated § 1692e(10) of the FDCPA when it was deceptive with
23 Plaintiff when its collectors called her and did not identify themselves as debt collectors, when it
24 attempted to collect a debt that Plaintiff did not owe, and when it made other deceptive or
25 misleading representations.

1 **COUNT VI**
2 **DEFENDANT VIOLATED § 1692f OF THE**
3 **FAIR DEBT COLLECTION PRACTICES ACT**

4 33. Section 1692f of the FDCPA prohibits debt collectors from using unfair or
5 unconscionable means to collect or attempt to collect an alleged debt.

6 34. Defendant violated § 1692f of the FDCPA by calling Plaintiff continuously and
7 repeatedly on her cell phone over the course of many months, by continuing to contact her after
8 she demanded that Defendant cease communication with her, with it failed to identify itself as a
9 debt collector to Plaintiff, when it attempted to collect a debt not owed by Plaintiff, and when it
10 engaged in other unfair or unconscionable conduct.

11 **COUNT V**
12 **DEFENDANT VIOLATED § 1692f(1) OF THE**
13 **FAIR DEBT COLLECTION PRACTICES ACT**

14 35. Section 1692f(1) of the FDCPA prohibits the collection of any amount unless
15 such amount is expressly authorized or permitted by law.

16 36. Defendant violated § 1692f(1) of the FDCPA when it attempted to collect a debt
17 that Plaintiff never expressly authorized, nor that was permitted to be charged by law.

18 **COUNT VI**
19 **DEFENDANT VIOLATED § 1692g(a) OF THE**
20 **FAIR DEBT COLLECTION PRACTICES ACT**

21 37. Section 1692g(a) of the FDCPA states that within five days after the initial
22 communication with a consumer in connection with the collection of a debt, a debt collector shall
23 send the consumer a written notice containing the amount of the debt, the name of the creditor to
24 whom the debt is owed, the manner in which to dispute the debt, and that if the debt is disputed,
25 that the debt collector will obtain verification of the debt, and will provide information to

1 Plaintiff on how to dispute the debt.

2 38. Defendant violated § 1692g(a) of the FDCPA when it failed to provide any
3 written notification or any information in writing to Plaintiff in regards to the alleged debt within
4 five days of its initial contact with the Plaintiff, including how to dispute the debt or obtain
5 verification of the debt.

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8 **COUNT VII**
9 **DEFENDANT VIOLATED**
10 **THE TELEPHONE CONSUMER PROTECTION ACT**

11 39. Section 227(b)(3)(A) of the TCPA authorizes a private cause of action for a
12 person or entity to bring in an appropriate court of that state “an action based on a violation of
13 this subsection or the regulations prescribed under this subsection to enjoin such violation.”

14 40. Section 227(b)(3)(B), of the Act authorizes a private cause of action for a person
15 or entity to bring in an appropriate court of that state “an action to recover for actual monetary
16 loss from such a violation, or to receive \$500 in damages for each such violation, whichever is
17 greater.”

18 41. A non-debtor has a vastly greater privacy interest from debt collection telephone
19 calls to a cellular telephone than an individual who is a debtor. Watson v. NCO Group Inc., 462
20 F.Supp.2d 641 (E.D. Pa. 2006.)

21 42. Despite the fact that Plaintiff is a non-debtor who never consented to Defendant
22 making calls to her telephone, upon information and belief, Defendant placed non-emergency
23 calls to her telephone without Plaintiff’s consent.

24 43. The Act also authorizes the Court, in its discretion, to award up to three (3) times
25 the actual damages sustained for violations.

1 44. Here, upon information and belief, Defendant regularly placed non-emergency,
2 automated calls to Plaintiff's telephone, using a pre-recorded or artificial voice.

3 45. Defendant did not have Plaintiff's express consent prior to contacting her on her
4 telephone using an automatic telephone dialing system or pre-recorded or artificial voice.
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7 **PRAYER FOR RELIEF**

8 WHEREFORE, Plaintiff, T'ONYA GREEN, respectfully prays for a judgment as
9 follows:

- 10 a. All actual damages suffered pursuant to 15 U.S.C. § 1692k(a)(1);
11 b. Statutory damages of \$1,000.00 for the violation of the FDCPA pursuant to
12 15 U.S.C. § 1692k(a)(2)(A);
13 c. All reasonable attorneys' fees, witness fees, court costs and other litigation
14 costs incurred by Plaintiff pursuant to 15 U.S.C. § 1693k(a)(3);
15 d. Statutory damages of \$500.00 for each violation of the TCPA, pursuant to 47
16 U.S.C. §227(c)(5)(B); and
17 e. Any other relief deemed appropriate by this Honorable Court.
18

19 **CERTIFICATION PURSUANT TO L.CIV.R.11.2**

20 I hereby certify pursuant to Local Civil Rule 11.2 that this matter in controversy is not
21 subject to any other action pending in any Court, arbitration or administrative proceeding.
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23
24 **DEMAND FOR JURY TRIAL**
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1 PLEASE TAKE NOTICE that Plaintiff, T'ONYA GREEN, demands a jury trial in this
2 case.

3
4 DATED: 01/23/13

/s/ Amy L. Bennecoff
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